

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Chico Tillmon,

Civil No. 06-2356 (RHK-JJG)

Petitioner,

v.

R.L. Morrison,

Respondent.

**REPORT
AND
RECOMMENDATION**

JEANNE J. GRAHAM, United States Magistrate Judge

This matter comes before the undersigned Magistrate Judge of the District Court on Chico Tillmon's motion to withdraw his petition for writ of habeas corpus (Doc. No. 6). Mr. Tillmon (Tillmon) asserts that the Bureau of Prisons (BOP) has not properly considered his request for placement in a halfway house. The dispute is referred to this Court for a report and recommendation in accordance with 28 U.S.C. § 636 and Local Rule 72.1(c).

Tillmon is incarcerated at the federal prison in Duluth. He implies that he requested early placement at a halfway house, and that prison officials categorically denied this request under 28 C.F.R. § 570.21. Tillmon argues that this regulation violates the directions set out in 18 U.S.C. § 3621(b). Thus he asks that prison officials be required to consider his request for placement at a halfway house, applying the directions set out in the statute and disregarding the regulation.

By an opinion that issued April 6, 2006, the Eighth Circuit considered whether the regulation violated the statute in *Fults v. Sanders*. 442 F.3d 1088 (8th Cir. 2006). The court concluded that, because the regulation did not appropriately exercise the discretionary criteria set out in the statute, the

regulation was invalid. *Id.* at 1092. The BOP has since conceded that its regulation is invalid, and it has now implemented new guidelines on placement in halfway houses.

Perhaps in recognition of this corrective action by the BOP, Tillmon has moved to withdraw his petition. This motion may be appropriately treated as a motion for voluntarily dismissal under Rule 41(a)(2). In the absence of good cause to the contrary, it is appropriate to recommend that this matter be dismissed without prejudice. Being duly advised of all the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED THAT:**

1. Tillmon's motion to withdraw his petition for a writ of habeas corpus (Doc. No. 6) be **GRANTED.**
2. This matter be **DISMISSED WITHOUT PREJUDICE.**
3. Tillmon's motion for injunctive relief (Doc. No. 2) be **DENIED AS MOOT.**

Dated this 29th day of August, 2006.

s/Jeanne J. Graham

JEANNE J. GRAHAM
United States Magistrate Judge

NOTICE

Pursuant to D. Minn. LR 72.2(b), any party may object to this report and recommendation by filing and serving specific, written objections by September 19, 2006. A party may respond to the objections within ten days after service. Any objections or responses filed under this rule shall not exceed 3,500 words. A District Court Judge shall make a de novo determination of those portions to which objection is made. Failure to comply with this procedure shall operate as a forfeiture of the objecting party's right to seek review in the United States Court of Appeals for the Eighth Circuit. . . .